

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PATRICK OVERTON,

Plaintiff,

OPINION & ORDER

v.

10-cv-701-wmc

HEALTH COMMUNICATIONS, INC., CHICKEN SOUP FOR THE SOUL PUBLISHING, LLC, CHICKEN SOUP FOR THE SOUL ENTERPRISES, INC., CHICKEN SOUP FOR THE SOUL, LLC, JOHN T. CANFIELD, and MARK VICTOR HANSEN,

Defendants.

The purpose of this opinion and order is to resolve two outstanding claims pled by plaintiff Patrick Overton against the defendants in this case, for purposes of entry of final judgment.

First, in this action, plaintiff Patrick Overton brought claims against all of the above-captioned defendants under the Copyright Act, 17 U.S.C. §§ 101, et seq., and the Wisconsin Unfair Sales Act, Wis. Stat. § 100.18. Defendants Chicken Soup for the Soul Publishing, LLC and Health Communications, Inc. brought a motion for summary judgment seeking dismissal of plaintiff's Wisconsin Unfair Sales Act claims, arguing that the claims were pre-empted by federal law. The court granted the two defendants' motion with respect to this argument, dismissing the Wisconsin Unfair Sales Act claims. However, the court did not address the viability of plaintiff's Unfair Sales Act claims against other, non-moving defendants: Chicken Soup for the Soul, LLC, Chicken Soup

for the Soul Enterprises, Inc., John T. Canfield and Mark Victor Hansen. Because the court's preemption analysis holds equally true as to these remaining defendants, and because plaintiff conceded as much by failing to pursue its Unfair Sales Act claims against any defendant at trial, the court will *sua sponte* grant summary judgment on this issue in favor of the remaining defendants.

Second, during pre-trial hearings, defendants represented to the court that nominal corporate defendant Chicken Soup for the Soul Enterprises, Inc. ("Enterprises") does not exist. Defendants sought to dismiss Enterprises as a defendant and plaintiff did not oppose dismissal. Accordingly, the parties proceeded at trial as if Enterprises was no longer a party to the case. As plaintiff's words and actions unequivocally demonstrate an implied stipulation to dismissal of Enterprises as a defendant, the court will also formally dismiss it.

ORDER

IT IS ORDERED that:

1. Partial summary judgment is GRANTED in favor of defendants Chicken Soup for the Soul, LLC, Chicken Soup for the Soul Enterprises, Inc., John T. Canfield and Mark Victor Hansen, dismissing plaintiff's second cause of action for violation of Wis. Stat. § 100.18.
2. Defendant Chicken Soup for the Soul Enterprises, Inc. is ordered DISMISSED as a party.

Entered this 20th day of March, 2012.

BY THE COURT:
/s/

WILLIAM M. CONLEY
District Judge